App. F. IX-4

1928.
(Mayyai)

File No. 387-28

Serial Nos. /

Previous References
May 58-42-
52-81.

Later References

General and Revenue Secretariat.

Serial Nos. /

Part B for May 1929

SUBJECT

Enquires whether
Government permission is necessary to build
new places of worship

Filed.

The present practice may continue.

22/5/29

R.985
7.8.28

of Educl Secys note

Extract from KR file no 164-28-I 67

× × × Insaz 387-28 212

The Mujrai Dept may be asked to examine the question whether Govt permission is necessary to build new places of worship. I think the old chief commissioner's circular has not the force of law and could not have included that permission should be obtained for building village temples. Extract to Muj Branch.

(Intl) N.M
26-7.

× × × and send extract as directed.

(Intl) N.S.
26/7

An extract is put up.
Asd
26-7-28
27/3(8)28 to Muj Branch

Mian note d 27/3/28

J.A.A.

8/6

General and Revenue Secretariat.

Mus File No. 387 of 1928.

Serial No.

(Printed on page 129 of the Mus. manual).

(Printed on pages 129 & 130 (56-1912) A & 132 of the Mus. manual).

× Mus. F

× 4.15 under W.C.

3 - Chief Com's. Circular order dirtg. no. 2528-42 dy 22 8 1871 that Govt permission is necessary to build new places of worship. A perusal of Govt orders no. dy 6-6-1893 and 27-5-1904 × 22/12/1897 × relating to the Construction of masjids at Chittagong and Solur is solicited.

4 In G O. no 1332-63/Mus. 63-22-9, dy 28-9-1922. Sanctioning a revised Schedule of Powers, Govt have reserved the Power to accord Sanction to new places of worship. The M. C. has been sending up to Govt cases re construction of new places of worship (both Hindu and Mahomedan), and orders of Govt are passed with regard to the complaints of certain Mahomedan Govts about the restrictions in the matter of the Construction new Mahomedan places of worship. Secretary has examined this question from all aspects, and has given it a

(Mus. 7. 556-17 Sls 1-4)
O

NOTE—Contn. Sheet.

enue.

mag File No. 387 of 1928.

erial No.

opinion that in the interests of public peace, such an order is very necessary. Attention is respectfully invited to the remarks of Mr. C. Srikanteswara Iyer, late I.G. of Police D/ 10.7.1913 in mag. J. no. 281-1911 re the Construction of a mosque by the Labbay merchants of new Jarapeta, Bangalore.

6 Whether any relaxation can be permitted with regard to the Construction of new village temples, is a point for Consideration I need.

Submit:

A.

7 It seems expedient to Continue the practice 18/8/28 by in existence even though it may not have the force of law

28/8/28

8 Please put up the following records called for -

(1). As A supra.

(2) Govt. Pro. No 837-44-13 dt 6th May 1881.

21/8

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

App: F III—21

General and Revenue Secretariat.

File No. 387 of 1928.

Serial No.

S1

9 Both the recorded enclosures of Secy. I no 58 of 1892 3, and No 59 Leading to the order of 1881 the Subject

S, I,

10 I agree with the o/s Memo. The question has been fully examined in these papers, particularly in Sir Seshadri Iyer's minute of 4.6.93 on the authority of which Sly I, issued.

11 The long series of decisions, in which the people have acquiesced, seem to vest in Govt the power to permit or prohibit the construction of new temples or places of worship with due regard to the public interest.

12 The legal aspects of the case may be examined by the Legal Remembrancer

28 AUG. 1928 No. 1414

1st member

27.8.28

13 Secy 28.8.28

14 To L. R with Compliments

15 My opinion & place at below

WD 01714—GPB—30,000—18-4-28

Draft Compld

1st member

16 3/9/28

4011

NOTE—Contn. Sheet.

General and Revenue Secretariat.

File No. 587 of 1928.

Serial No.

17. ...e present practice may continue

5/1/29

(h Leg)

5/1/29

5 JUL 1929

18/ Seen

16/1

B

28/5

WD 01714—GPB—30,000—18-4-28

O P I N I O N.

I am asked to examine the question whether Government permission is in law necessary for the construction of new places of worship. On this subject there is a circular issued by the Chief Commissioner and printed at page 129 of the Nazrat Manual. It prohibits in para 2, the erection of buildings intended to be used as places of worship by any class of the community, on any public street or thoroughfare, in any town or village, without the previous permission of the District Officer in each case and in para 3 of the circular it is said that the privilage of preventing music when passing a place of worship will not be applicable to buildings erected without due sanction of the District Officer I agree with the Chief Secretary in thinking that this circular has not the force of law. It has not been included in the list appended to the Mysore Treaty and the very terms of the circular particularly para 3 shows that the erection of such buildings without previous permission is not illegal.

It is no doubt true that from the year 1871, people have acquiesced in the right of Government to permit or prohibit the construction of new places of worship. But I do not think that this can give the circular the force of law.

Classified by reference to legal sources there are only four kinds of law:--

(a) Enacted law, having its source in legislation

(b) Case law, having its source in precedent

(c) Customary law, having its source in custom

& (d) conventional law, having its source in agreement.

The circular in question cannot be construed to be enacted law since it is no declaration of legal rules by a competent authority. I do not think it

O P I N I O N.

I am asked to examine the question whether Government permission is in law necessary for the construction of new places of worship. On this subject there is a circular issued by the Chief Commissioner and printed at page 129 of the Mysore Manual. It provides in para 2, the erection of buildings intended to be used as places of worship by any class of the community, on any public street or thoroughfare, in any town or village, without the previous permission of the District Officer in each case and in para 3 of the circular it is said that the privilege of preventing music when passing a place of worship will not be applicable to buildings erected without due sanction of the District Officer I agree with the Chief Secretary in thinking that this circular has not the force of law. It has not been included in the list appended to the Mysore Treaty and the very terms of the circular particularly para 3 shows that the erection of such buildings without previous permission is not illegal.

It is no doubt true that from the year 1871, people have acquiesced in the right of Government to permit or prohibit the construction of new places of worship. But I do not think that this can give the circular the force of law.

Classified by reference to legal sources there are only four kinds of law:--

(a) Enacted law, having source in legislation

(b) Case law, having its source in precedent

(c) Customary law, having its source in custom

& (d) conventional law, having its source in agreement

The circular in question cannot be construed to be enacted law since it is no declaration of legal rules by a competent authority. I do not think that

it is possible to say that it has the force of law as a custom. The essential requirements necessary to make a custom operative as a source of law is tna that it must have oeen observed as of right from time immemorial. It is impossible to contend that the circular has its legal source either in precedent or in agreement. Consequently I am of opinion that there is in law no necessity for previous permission of Government for the erection of new places of worship on private property, even when it is on a public street or a thoroughfare. But in areas under a Municipality or Village Panchayet, it is possible to impose legal restriction by means of proper rules and oye-laws. If however it is intended to make the Chief Commissioner's circular have the force of law, the best way to do it is to enact a proper section in the Religious and charitable endowments Regulation prohibiting the erection of new places of worship without the previous sanction of Government and to provide suitable means of enforcing the rule.

Legal Rememorancer.
31. 12. 1925